APPEAL NO. 030782
FILED MAY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 29, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant appeals this decision and asserts that the hearing officer erred in various ways more specifically described below. The claimant additionally attaches new evidence to her appeal, which was not offered at the hearing. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the evidence that the claimant attached to her request for review, which was not offered into evidence at the hearing. Accordingly, we decline to consider the evidence on appeal.

The claimant asserts that because the hearing officer did not refer to specific evidence in the Statement of the Evidence, she did not consider all of the evidence. In Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993, an attack on the hearing officer's discussion of the evidence was considered. That appeal stated that the hearing officer was not required to recite the facts since the 1989 Act only requires findings of fact, conclusions of law, whether benefits are due, and an award of benefits due. A statement of evidence, if made, only needs to reasonably reflect the record. The Statement of the Evidence reasonably reflects the evidence in this case.

The claimant contends that the carrier's witnesses "should have been separated because they were able to prepare and compare each other[']s testimony." However, the record reflects that the claimant did not object to the presence of the witnesses in the hearing room until the conclusion of the testimony of the carrier's second witness. Texas Rules of Evidence Rule 614 ("the rule") provides, in part, that at the request of a party . . . the court shall order witnesses excluded. Upon invoking the rule, the hearing

officer excluded the witnesses from the hearing room. It was incumbent upon the claimant, not the hearing officer, to invoke the rule.

On appeal, the claimant asserts that the hearing officer erred in considering "the 6 emails, and the photographs of the room, and the [employer] Olympics". Presumably, the claimant is referring to Carrier's Exhibit Nos. 15, 17, and 19. We note that the claimant did not object at the hearing to the admission of any of the carrier's exhibits, and, therefore, waived the right to do so. The claimant additionally alleges that during the interim between the hearing date and the date upon which the decision was issued, the claimant's attorney called the hearing officer to inquire as to the status of the decision and was told, "if we did not wait, we would not like the outcome". As the claimant has merely made an unsubstantiated assertion, we decline to further address the matter.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Chris Cowan
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Gary L. Kilgore
Appeals Judge